JD–68–03
San German, PR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WALLACE INTERNATIONAL
DE PUERTO RICO, INC.
AND INTERNATIONAL SILVER
DE PUERTO RICO, INC.

and Case 24–CA–8858

CONGRESO UNIONES DE INDUSTRIALES
DE PUERTO RICO

Jose Luis Ortiz, Esq.,
for the General Counsel.
Yldefonso Lopez Morales, Esq.,
of San Juan, Puerto Rico,
for the Respondent.

DECISION

Statement of the Case

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried before me in San Juan, Puerto Rico, on March 25, 2003, upon a complaint, dated November 27, 2002, as amended on March 11, 2003, alleging that the Respondent, Wallace International de Puerto Rico, Inc. and International Silver de Puerto Rico, Inc. (Wallace International de P.R., Inc., and Silver International of P.R. Inc.), violated the National Labor Relations Act (the Act) by issuing a disciplinary letter, suspending from employment and terminating the employment of its employee, Jose Ayala, because of his union activities. The underlying charges were filed by the Union, Congreso de Uniones Industriales de Puerto Rico, on February 8, 2001, as amended on April 26, 2001. The Respondent filed a timely answer, admitting the jurisdictional elements of the complaint and denying that the Company committed any unfair labor practices alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs by the General Counsel and counsel for the Respondent, I make the following

Findings of Fact

I. Jurisdiction

According to prior Board decisions involving the same parties, as well as the parties' admissions in this case, Wallace International de Puerto Rico, Inc. and International Silver de Puerto Rico, Inc. are affiliated business enterprises with common officers, ownership, directors, management, and supervision, which formulated and administered a common labor policy.

Both companies constitute a single employer under the Act. (See *Wallace International of Puerto Rico*, 314 NLRB 1244 (1994) (*Wallace I*), and *Wallace International De Puerto Rico*, 328 NLRB 29 (1999) (*Wallace II*). In the course and conduct of its operations in the manufacture of flatware (silver) at its location at San German, Puerto Rico, during the 12-month period immediately preceding the issuance of the complaint, the Respondent purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. The Respondent is admittedly an employer engaged in commerce within the meaning of 2(2), (6), and (7) of the Act.

The Congreso de Uniones Industriales de Puerto Rico, the 'Union', is a labor organization within the meaning of Section 2(5) of the Act.

II. Issues

According to the General Counsel, the record shows that the Respondent violated Section 8(3) and (1) of the Act, when it suspended and fired its employee, Jose Luis Ayala, because he had engaged in union activities. The Respondent argues that Ayala was fired, because he frequently left his workstation, which endangered worker safety.

A. *Background*

1. Ayala's employment and union history

Ayala began working for the Respondent in 1985. He was an operator in the finishing area and a polisher. The Respondent has consistently rated his work performance throughout his tenure as "Bueno" or good (G.C. Exhs. 9-15). The employees' performance evaluations have four main categories, ranging from poor to excellent. Ayala has received annual pay raises, and in connection with his final evaluation he received a 30-cent raise while other employees received only a 20-cent increase. He frequently worked overtime, between 10 and 15 hours a week. Until 1992 or during the first 7 years of his employment, Ayala had not incurred any warnings or other forms of discipline. The only criticism which management had noted on several of his evaluations was that he abandoned his work area to speak with other employees about matters unrelated to his work. His involvement with the Union began in December 1992. He attended a union meeting with other employees and signed a union membership card (GC Exh. 2a). At the meeting, he received materials for distribution to his coworkers. After the meeting, he wore a "Vote Yes" button to work and declined to wear the "Vote No" button offered by General Manager Jose Arroyo. Arroyo testified that he knew Ayala was involved with the Union because Ayala wore the "Vote Yes" button and discussed his union support with Arroyo.

Ayala was considered to be one of the principal union activists in the prior cases. In *Wallace I*, the Board found that the respondent had violated the Act in several instances, and inter alia by offering Ayala a better paying job in order to induce him to refrain from engaging in union activities (*Wallace I,* 314 NLRB at 1246). Among the violations found in *Wallace II,* the Board had considered, but dismissed, allegations of discrimination against Ayala, because of his union activities.

Ayala received his first written reprimand on January 13, 1993 (GC Exh.3b), about a month after attending the union meeting. According to his testimony, he was speaking with coworkers about the Union during his own free time. Nevertheless, Plant Supervisor Roberto Oliveras, told him to stop his campaign for the Union. Oliveras took him to Personnel Director Magali Cruz's office, where Ayala received a written warning. According to the Respondent's

disciplinary form, Ayala was given a disciplinary warning for "interrupting his regular work routine by making excessive comments during the whole day about subjects unrelated to his regular work." His personnel file also contains a written warning, dated January 18, 1993 (GC Exh. 16b), for abandoning his work area, making comments to coworkers unrelated to his work, and leaving his machine running. Ayala testified that he did not recall receiving this warning.

The first union election was held on February 24, 1993, where Ayala served as a union observer. The results of this election were contested and led to the NLRB decision (*Wallace I),* which ordered a second election and where Ayala's testimony supported the Board's conclusion that Oliveras had offered Ayala a raise to oppose the Union. A second election was held in 1994. Ayala again served as a union observer. This election was also contested, resulting in the second NLRB case involving the Respondent. The election was set aside again because of the Respondent's unlawful conduct, which the Board described as "serious and pervasive" (*Wallace II*, 328 NLRB at 30). Ayala also testified at the second trial. The third election was held on February 24, 2000, and again Ayala served as a union observer. The Union lost the election.

Ayala testified in the present proceeding that he was one of the leading union activists among the employees. A few months before February 24, 2001 (nearly a year after the last election), Ayala and several coworkers met after working hours to discuss the Union and to try to organize again. He testified that these meetings took place at coffee shops. He testified as follows (Tr. 46):

> "When the following year was getting closer, after the last election, about two months prior to that I met with several of my co-workers after working hours. We talked about what we were thinking. See if we could agree to distribute cards and collect signatures and give the Union one last try to see if we could get it into the company. We met at Madrid Coffee Shop and El Cubano, Cubano is another coffee place."

Luis Soto, an employee who retired in 2002, also testified that he and Ayala spoke about organizing the Union a few months before Ayala was fired. Soto testified that other employees were close by when he and Ayala had these conversations.

Winston Gregory, a current employee, testified, however, that he was unaware of any union activity at the plant since the 2000 election. Gregory testified that he has worked for the Respondent for 21 years and that he works in all parts of the facility. Gregory recalled (erroneously) that the union movement began in 1999, and that he believed that all three elections took place within a couple years of each other. When asked if the Congreso Uniones de Industriales was the Union trying to organize the Respondent's factory, Gregory said, "No." He also testified that he acted as an observer for the Respondent in all three elections. The record contains the stipulated testimony of three other employees in other areas of the plant, (Melvin Cruz in the maintenance department, Luis Mercado in the finishing department, and Wilfredo Serrano in the making department) that they were unaware of any union activity since the 2000 election.

a. *Ayala's conversation with Lourenco*

Ayala had not received any discipline since January 1993, however, a few weeks after the third election in February 2000, he was called into a meeting with Arroyo, Vice President Merle Randolph, and Jesse Lourenco, head of security, and since 2003 in charge of all operations at the Respondent's facility. Ayala testified that Arroyo translated into Spanish the

statements made in English by Randolph and Lourenco. Ayala alleges that at this meeting Lourenco told him that if he continued to be active in the Union he would be fired. Ayala testified as follows (Tr. 45):

> "Mr. Arroyo was translating what they were telling me and they were telling me to work as a family and to forget what had happened in the past. — To erase it all and not to think that they were going to take actions against me. — There Jesse Lourenco told me that if I got involved in any other Union activity he was going to fire me."

Lourenco's testimony also shows that he had frequently met with Ayala. Lourenco testified that every couple of months he came to Puerto Rico to visit the facility. Ayala would then ask to speak to him. But, according to Lourenco's testimony, these meetings were on a one-on-one basis with Iris Bonilla, an employee, serving as the interpreter. Lourenco denied that he threatened to fire Ayala for engaging in union activity. He also testified that he never attended a meeting in which he, Ayala and another member of management were present. Arroyo also testified that he never acted as a translator for Lourenco.

b. *Ayala's disciplinary record 2000-2001*

On May 22, 2000, Ayala received a memorandum entitled, " Change of Workstation," transferring him to a different workstation. The memorandum accused him of speaking with coworkers and failing to pay attention while working (GC Exh.4b). Ayala testified, however, that he spoke to his coworkers only about work-related matters. Soto, who had worked with Ayala, testified that employees did not ordinarily talk about personal or nonwork-related topics during work hours. He further testified that the machines in the room were so noisy that the employees wore earplugs, and could only be heard if someone was less than 2 feet away. On June 7, 2000, Ayala received a written warning for abandoning his work area (GC Exh. 5b). Ayala testified he had to leave his workstation at times to perform his work-related tasks. He gave a detailed description of tasks he needed to complete away from his workstation, which could take between 10 and 15 minutes.

On January 11, 2001, Ayala received a written warning for returning to his work area late from a break (GC Exh. 6b). Ayala testified that employees left for and returned from breaks according to a bell. The bell had not yet rung when he returned from break that day and three of his coworkers were returning at the same time; they were, Monserrate Saavedra, Constancio Ramos, and Jimmy Diaz. Soto testified that all employees take breaks at the same time and returned to work when the bell rang. However, Arroyo testified that the Respondent had never had an employee named Jimmy Diaz.

2. *Ayala's suspension and discharge*

On January 25, 2001, Ayala was suspended from work for 3 days for being outside his work area during working hours and "using badly the time for work" (GC Exh. 7b). Ayala testified that he only left his workstation to use the restroom or to "get more work." He also testified that he had requested that a witness accompany him to the meeting where he was informed of his suspension, but the request was refused. On February 9, 2001, when Ayala reported for work, he was told by Production Manager Lugo to go to the office of Adiel Ramos, human resources director. There, in the presence of a security guard, the Respondent notified Ayala by memorandum that he was discharged for being outside his work area and speaking with coworkers during work hours, thereby affecting their safety (GC Exh. 8b). Ayala argued that he was a good employee and had good evaluations. According to Ayala, Ramos stated

that he agreed that Ayala had good evaluations but they had decided to fire him.

Ramos testified that Ayala's union activities had nothing to do with the decision to suspend or fire him. The reason for Ayala`s discharge was, according to Ramos, "the constant abandoning of his area of work." He stated that he had no knowledge of any union organizing activity after the 2000 election, but that he was aware of Ayala's activities with the Union prior to year 2000. Ramos testified that he had become aware of Ayala's prior union activities, including his presence at union meetings, because it was discussed among the employees. He also testified that members of management had talked about Ayala's union activity.

When asked if he had knowledge of Ayala's participating as a union observer in the 2000 election, Ramos equivocated, first answering that he did not see Ayala participate as an observer, then stating that he knew that he was an observer, and finally testifying, "I did not see him and if I didn't see him I don't know if he was an observer or not." Ramos was unable to recall how many warnings Ayala had received before he was fired. When asked if the number of warnings was 1 or 2 or more than 10, Ramos said he did not know. Ramos later testified that there are rules posted in the Respondent's facility saying that the first disciplinary action should be verbal, the second should be written, the third infraction can lead to suspension, and the fourth can lead to discharge.

He testified that he had decided to take disciplinary action against Ayala, after consultation with management, because Ayala's file showed that he left his work area often. Ramos further testified that the decision to fire Ayala was made by management as a team, including himself, Lourenco, Arroyo, Randolph, and Lugo. Ramos stated that the persons primarily responsible for the decision to fire Ayala were upper management and that his job was to write the letter and give it to Ayala.

Arroyo testified that he was part of the decision to fire Ayala, because he was posing a risk to himself and for the employees and for the Company. He testified that he was unaware of Ayala`s union activity in 2001, and that the decision to fire Ayala was discussed at headquarters, but that it was not made because of the union activity. Arroyo further testified that other employees who had been active in the Union were still employed by the Respondent. Arroyo testified that the wheel Ayala worked on at the Respondent's facility could be dangerous if the employee was distracted.

Analysis

Section 8(a)(3) of the Act makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization," i.e., the discharge of an employee for engaging in union activity. To prove such a violation, the General Counsel must establish that the employer's decision to fire an employee was motivated by the employee's protected conduct. In cases in which the employer's motivation is at issue, the analytic framework is established by *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 622 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). Under *Wright Line*, the General Counsel must first establish a prima facie case by showing that the employee was engaged in union activity, that the employer had knowledge of this activity, that the employer showed animus towards union activity, and that this animus, resulted in the decision to fire the employee. Knowledge of union activity, animus and discretionary motivation can be inferred from the circumstances of the case, even in the absence of direct evidence. *Fluor Daniel, Inc.,* 304 NLRB 970 (1991). These inferences can be supported by evidence of suspicious timing, false or pretextual reasons, and a failure to adequately investigate the alleged misconduct. *Washington Nursing Home*, 321

NLRB 366, 375 (1996); *Aquatech, Inc.,* 926 F.2d 538, 547 (6th Cir. 1991). An employer's long and substantial history of repeated significant violations of the Act may properly be considered as evidence of improper motive in personnel actions*. J.P. Stevens & Co. v. NLRB*, 38 F.2d 676 (4th Cir. 1980). If a prima facie case is established, the burden shifts to the employer to show that the same decision would have been made even in the absence of the protected conduct. *Wright Line*, 251 NLRB at 1089.

The General Counsel argues that a prima facie case of discrimination was established, because Ayala's extensive union activities were well known to the Respondent, and that the Respondent has a history of animus towards the Union. The General Counsel further argues that the Respondent's alleged reasons for firing Ayala were a pretext given the absence of evidence that Ayala was actually frequently away from his work station, that even assuming the alleged behavior was true, it had been condoned by the Respondent for years and that the timing of the disciplinary actions taken against Ayala was suspicious. The Respondent argues that the General Counsel has not established a prima facie case because there is no causal connection between Ayala's union activity and his discharge. The Respondent argues that the discharge of an employee almost a year after the last union election is too remote to suggest causation and that the Respondent was unaware of union activity at the time of Ayala's discharge. Additionally, the Respondent argues that even if a prima facie case is established it has established that it would have discharged Ayala in the absence of protected activity.

B. The General Counsel has Established a Prima Facie Case

1. Ayala engaged in union activity

It is uncontested that Ayala was active in the efforts to unionize the Respondent's facility. Ayala acted as a union observer at all three elections and wore a "Vote Yes" button to work. Ayala testified that he was one of the main activists trying to unionize the facility and has twice testified against the Respondent at NLRB hearings. In *Wallace I* (supra at 1246), the Board found that the Respondent had offered Ayala a better paying job to dissuade him from union support, and that he had "made a comment to other employees that they should continue unionizing because the union was the strength" (fn. 9). In *Wallace II*, the Board again found that Ayala had supported the Union, namely his testimony in the prior case and "his card collecting activities" (supra at 37). Additionally, I credit Ayala's testimony that he was engaged in union activity immediately prior to his discharge. Ayala's testimony that he engaged in conversations with coworkers about organizing the employees is uncontested and corroborated by Soto. In the prior decisions, the Board found Ayala to be a credible witness.

I also credit Gregory's testimony and the stipulated testimony of three other employees that they were unaware of any union activity in the Respondent's facility since the 2000 election. However, the fact that four employees are unaware of the activity does not mean that it was not occurring. Gregory's observations may not have been sufficiently astute. For example, his recollection of past union activity at the Respondent's facility was imprecise, when he testified that to the best of his knowledge the union activity began in 1999. It actually began in 1993. Gregory testified that he believed all three elections had occurred within a couple years of each other. In reality, there was a 6-year gap between the second and the third election. He also did not know that Congreso de Uniones Industriales was the Union trying to organize the Respondent's employees. His testimony reveals that he personally was not too familiar with the Union and its activity at the facility.

2. *Respondent had knowledge of Ayala's union activity*

That the Respondent had general knowledge of Ayala's union activity was found repeatedly in the prior Board decisions, as well as the instant record. Ramos and Arroyo, both admitted that they were aware of Ayala's union involvement prior to the 2000 elections. Ramos testified that he was aware of Ayala's union activities in the past, and that it was the subject of discussion by members of management. Arroyo testified that Ayala spoke with him about the Union.

Not as clear is the evidence of the Respondent's knowledge of Ayala's union activity immediately prior to his discharge. That inference can be drawn from the surrounding circumstances. Soto gave uncontested testimony that conversations between him and Ayala about the Union took place while other employees were nearby. Ayala testified that he had discussed the Union with several employees in coffee shops. Ramos testified that in the past he had become aware of Ayala's union activities through the discussions among the employees. According to Ramos's testimony, in the past management had discussed Ayala's involvement in the Union after it was discussed among the employees. It is plausible to assume that Ramos and other members of management were informed in the same manner about Ayala's renewed efforts to unionize. Ramos's testimony that he was unaware of Ayala's renewed union activity is not persuasive. His testimony was at times evasive and unclear. For example, stating that he took part in the decision to fire Ayala, he also indicated that he merely drafted the letter informing Ayala of upper management's decision. The Respondent, in its brief, argues that an employer cannot be presumed to have knowledge of a union activity, which was kept a secret. However, there is no evidence that the discussions between Ayala and his coworkers were held in secret. To the contrary, other employees were nearby and could have overheard their union talk. Even without actual knowledge, management might simply have concluded that the 1-year period from the last election was about to expire, signaling the resumption of Ayala's repeated attempts to organize.

3. The Respondent demonstrated animus towards the union activity

The Respondent has a proven history of animus towards the Union. Two elections were ordered set aside, as a result of the Respondent's unfair labor practices. See *Wallace I and II.* "The Respondent has demonstrated a proclivity to violate the Act when faced with a union organizing effort among its employees." *Wallace II,* 328 NLRB at 29. The evidence here shows that after working for the Respondent for 7 years without any discipline, Ayala received his first disciplinary warning soon after management became aware of his union activity. Significantly, shortly after the last election, the Respondent's management threatened Ayala that if he continued to engage in union activity he would be fired.

4. *Ayala's discharge was motivated by union animus*

The Respondent's witnesses, Arroyo and Ramos, denied that Ayala's union activity was the motivating factor in that decision. However, as effectively argued by the General Counsel, the record shows otherwise. Initially it is clear, as reflected in the prior *Wallace* cases, that Ayala had already been the victim of the Respondent's antiunion animus. He was disciplined in January 1993 for his union support. At a management meeting in February 2000, he was warned that he would be fired if he continued his union activities. He obviously ignored the warning and was suspended and discharged. The timing of the Respondent's conduct suggests an improper motive.

The Respondent's explanations are not convincing and appear implausible and pretextual. Here, as in *NLRB v. Hale Container Line*, 943 F.2d 394 (4th Cir. 1991), the Company's "rationale for firing [the employee] conflicts with its own recognition of [the employee's] past performance." If an employer recently gave the employee a wage increase, a sudden dissatisfaction with the employee is often pretextual. *Florida Steel Corp.* v. *NLRB,* 529 F.2d 1225 (5th Cir. 1976). Ayala was not only given recent pay raises, but he was also rated consistently as a "good" employee. The Respondent has not shown that Ayala had actually engaged in the conduct of which he is accused. For example, an employer's failure to investigate the incidents upon which the employer relied suggests an improper motive. *W.W. Grainger, Inc. v. NLRB,* 582 F.2d 1118, 1121 (7th Cir. 1978). Ramos admitted to never actually observing Ayala leave his workstation, nor did anyone testify that anyone had seen Ayala create an unsafe situation in the facility. Arroyo explained that leaving the area of the machine could be risky, but Ayala's uncontested testimony shows that he had to be away from his workstation from time to time for work-related activities. Finally, assuming that Ayala wrongfully abandoned his workstation, the record shows that the Respondent was critical of such conduct for many years without suspending or discharging the employee, but rating his performance as good and giving him pay raises. A discriminatory motive can be inferred when the Respondent has long tolerated Ayala's conduct, in effect condoning it. *Cadbury Beverages, Inc. v. NLRB*, 160 F.3d 24 (D.C. Cir.1998); *Made in France, Inc. v. NLRB,* 336 NLRB No. 8 (2001).

The Respondent argues that animus cannot be inferred as the reason for discharge because there is no causal connection between the union activity and the adverse employment action. Such a connection can be inferred, however, from all the surrounding circumstances.

5. The Respondent has not shown Ayala would have been fired in the absence of union activity

The Respondent argues that Ayala would have been fired even in the absence of his union activity. The behavior, which ostensibly prompted Ayala's discharge, had, according to the employee evaluations, been occurring since 1989. Nevertheless, he received his regular pay increases and was consistently regarded as a good employee. It is implausible that Ayala's behavior at work, which had been consistent for 11 years, was suddenly so intolerable that it warranted his discharge. Under these circumstances and for the reasons submitted by the General Counsel, the Respondent has clearly failed to show that it would have taken the same action, even in the absence of any union activity. I, accordingly, find that the Respondent violated the Act.

The Adverse Inference

The General Counsel renews the motion that an adverse inference be drawn as a result of the Respondent's failure to produce certain subpoenaed documents. The record shows that the General Counsel issued a subpoena to the Respondent. Certain documents were provided pursuant to the subpoena, but the Respondent failed to comply with the request for (a) the personnel files of the employees and (b) documents showing all disciplinary actions for the period of January 1, 1998, to February 28, 2001. As stated on the record, I found these documents to be relevant.

I believe that the General Counsel has made out a strong showing of the Respondent's violation of the Act as alleged in the complaint. I have therefore made the findings of fact and conclusions of law without drawing an adverse inference. However, I find that procedurally an inference would clearly be justified. Such an inference would support the General Counsel's case and disfavor the Respondent's defense.

Conclusions of Law

1. The Respondent, Wallace International de Puerto Rico, Inc., International Silver de Puerto Rico, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By issuing a disciplinary letter to, suspending, and discharging Jose L. Ayala because of his union activities, the Respondent violated Section 8(a)(1) and (3) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Wallace International de Puerto Rico, Inc. and International Silver de Puerto Rico, Inc., San German, Puerto Rico, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Issuing disciplinary letters, suspending or discharging Jose L. Ayala or any other employee because they engage in protected or union activity.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[2]

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Jose L. Ayala full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Jose L. Ayala whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, computed on a quarterly basis, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful disciplinary letter, suspension, or discharge of Jose L. Ayala and within 3 days thereafter notify the employee in writing that this had been done and that the discharge will not be used against him in any way.

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[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] The Respondent has a proclivity to violate the Act.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this order.

(e) Within 14 days after service by the Region, post at its facility in San German, Puerto Rico, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondents authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 25, 2001, *Excel Container, Inc.,* 325 NLRB 17 (1997).

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 27, 2003.

Karl H. Buschmann
Administrative Law Judge

[3] If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATE COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT discipline, suspend or discharge Jose L. Ayala or any other employee because they engaged in union activities protected under the Act.

WE WILL NOT in any other manner, interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Jose L. Ayala full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose L. Ayala whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discipline, suspension and discharge of Jose L. Ayala, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WALLACE INTERNATIONAL
DE PUERTO RICO, INC.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002, San Juan, PR 00918-1002
(787) 766-5347, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (787) 766-5377.